IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3297 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

P. B. ROY SINCE DECEASED AND HIS LEGAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3297 of 1987
MR VJ DESAI for Petitioners No. 1-1/2
MR UR BHATT, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 19/10/2001

ORAL JUDGEMENT

The learned counsel for the petitioners has been granted leave to amend the cause title which amendment is accordingly carried out today.

2. On 28.2.1985, original petitioner Dr PB Roy

superannuated at the age of 58 years from the post of professor in Pathology at the Government Medical College, Surat after having put in service of 29 years and 3 months. Since he was being paid only 100% provisional pension, but no gratuity was paid, Dr Roy filed the present petition on 14.3.1987 for a writ of mandamus to direct the respondents (State of Gujarat in the Health Department, Director of Health & Medical Services, Civil Hospital, Ahmedabad and the Director of Pension through the Chief Auditor dealing with Pensions) to finalize the petitioner's pension case and to pay the petitioner arrears of pension and gratuity with 15% interest from the date of retirement.

3. Pursuant to the notice issued by this Court, Dr RC Shah, Deputy Director of Medical Education, Gujarat State filed affidavit in reply dated 4.12.1987 stating that the petitioner was alleged to have been involved in some illegalities or irregularities and, therefore, an investigation was pending with the Vigilance Commissioner. If at the end of inquiry it is found that because of negligence or carelessness on the part of the petitioner if any loss was caused to the Government, such loss would be deducted from the amount payable to the petitioner and if the petitioner is ultimately exonerated, the petitioner would be paid all amounts which he is entitled to. In the said reply affidavit dated 4.12.1987, it was stated that certain departmental inquiries were contemplated against the petitioner for the aforesaid alleged misconduct and, therefore, the petitioner was being paid only 100% provisional pension at the rate of Rs.1,034/- per month.

4. Affidavit in rejoinder came to be filed by the original petitioner on 11.1.1988 stating that the petitioner had not received any charge sheet till the date of filing the said rejoinder affidavit. It is specifically stated in the rejoinder affidavit that no action can be taken by the respondents under Rules 189A and 189B of the Bombay Civil Services Rules after passage of more than 2 years and 10 months from the date of the petitioner's retirement.

5. Thereafter, the original petitioner expired and Mrs Arti P Roy, widow of the deceased-petitioner and Tamaal P Roy, son of the deceased-petitioner filed Civil Application No. 7166 of 2001 for being joined as the heirs of the deceased petitioner on account of the death of original petitioner-Dr PB Roy on 7.6.1989. That application was granted by this Court on 12.9.2001.

6. At the hearing of this petition today, Mr VJ Desai, learned counsel appearing for the petitioners states that no charge sheet was issued to the petitioner for a period of four years from the date of his retirement and even thereafter and, therefore, the respondents had no authority to withhold any gratuity payable to the petitioner upon his superannuation from service. So also the respondents were bound to finalize the petitioner's pension case and to pay the petitioner all the arrears of pension and gratuity with interest at the rate of 15% p.a.

7. Nothing is pointed out on behalf of the respondents as to why the petitioner was not paid gratuity till he expired on 7.6.1989 nor is it pointed out why the petitioner's pension case has not been finalized and the petitioner or after the petitioner's death, his heirs have not been paid the arrears of difference of pension and gratuity or arrears of difference of family pension.

8. In view of the above facts, it is obvious that the respondents have no defence to the petitioners' claim for finalization of the pension case of late Dr PB Roy and for the revision of pension in accordance with the relevant rules and the payment of arrears of difference of pension and family pension as well as the payment of gratuity with interest thereon.

9. Mr VJ Desai, learned counsel for the petitioner submits that all the amounts payable to the petitioner are required to paid with 15% interest as claimed in the petition.

Mr UR Bhatt, learned AGP for the respondents opposes the request and submits that now the bank rate of interest is only 9%.

Mr Desai has thereupon submitted that the petitioners are now ready to accept the interest at the rate of 9%, if it is to be paid on compound interest basis from the due dates.

However, the Court considers it to be just and proper to award simple interest at the rate of 12% p.a. from the date on which the amounts became payable to original petitioner-Dr PB Roy and after his death to the petitioners.

10. In view of the above discussion, the petition is allowed in terms of the following directions.

I The respondents i.e. State of Gujarat in the Health Department, Director of Health & Medical Services, Civil Hospital, Ahmedabad and the Director of Pension through the Chief Auditor dealing with Pensions are hereby directed -

(i) to pay the petitioners arrears of death-cum-retirement gratuity payable to Dr PB Roy, retired professor in Pathology at the Government Medical College, Surat in accordance with the relevant rules with interest at 12% p.a. from 1.3.1985 till the date of payment as expeditiously as possible and in any case within three months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

(ii) The respondents shall finalize the pension case of late Dr PB Roy and also to revise the pension payable from time to time in accordance with law as expeditiously as possible and in any case within two months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

(iii) to pay the petitioners arrears of difference of pension payable to Dr PB Roy with effect from 1.3.1985 till 7.6.1989 in accordance with law with interest at 12% p.a. as expeditiously as possible and in any case within three months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

(iv) To finalize the family pension case of petitioner No. 1/1 - Mrs Arti P Roy, widow of late Dr PB Roy as expeditiously as possible and in any case within two months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

(v) To pay petitioner No. 1/1-Mrs Arti P Roy the arrears of difference of family pension with effect from 8.6.1989 onwards in accordance with the relevant rules

with interest at 12% p.a. with effect from 8.6.1989 till the date of payment as expeditiously as possible and in any case within three months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

II If the respondents do not make the payments within the aforesaid time limits, the respondents shall be liable to pay costs of this petition which are quantified at Rs.10,000/- within three months from today and while the Government shall pay such costs, the Government shall initially pay such costs to the petitioners and thereafter the amount of costs shall be recovered from the officer/employee/s who is/are found to be responsible for the delay. If, however, the amounts due and payable are paid to the petitioners within the aforesaid time limits, no amount shall be required to be paid to the petitioners by way of costs.

11. Rule is made absolute to the aforesaid extent.

(M.S. Shah, J.)

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